

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

MAGNOLIA ISLAND PLANTATION	§	CIVIL ACTION NO: 5:18-cv-01526
L.L.C. and BARBARA MARIE CAREY	§	
LOLLAR	§	
Plaintiffs	§	
	§	
VS	§	CHIEF JUDGE S. MAURICE HICKS, JR.
	§	
LUCKY FAMILY, L.L.C., W.A. LUCKY,	§	
III, and BOSSIER PARISH SHERIFF	§	
JULIAN C. WHITTINGTON	§	
	§	MAGISTRATE JUDGE KAREN HAYES
Defendants	§	Jury Trial Demanded

MOTION TO CORRECT SCHEDULING ORDER

Barbara Marie Carey Lollar and Magnolia Island Plantation, LLC (“Plaintiffs”) herein move to correct the most recently-amended version of the Scheduling Order in this matter, as follows:

1.

This Court entered an Amended Scheduling Order in this suit on September 23, 2019 (**Rec. Doc. 52**). That order set trial for April 13, 2020 and contained a number of pre-trial deadlines. One of those deadlines was on January 6, 2020, for “Daubert/Expert Testimony Motions.”

2.

No party filed a *Daubert* motion prior to the January 6, 2020 deadline.

3.

On February 11, 2020, this Court signed an Order upsetting the April 13, 2020 trial date (the “Order,” **Rec Doc.** 130). The Order also stated that all deadlines in the prior scheduling order “not expired as of this date are hereby CONTINUED WITHOUT DATE.”¹

4.

On February 28, 2020, the parties to this suit held a scheduling conference with the court to set a new trial date and re-set the deadlines on the previous schedule which had not expired, in accordance with the February 11, 2020 Order.

5.

On March 2, 2020, the Court signed an amended Scheduling Order (the “Scheduling Order,” **Rec. Doc.** 137).

6.

The March 2, 2020 Scheduling Order sets a new deadline of March 20, 2020 for *Daubert* motions, despite the fact that the prior deadline for *Daubert* motions passed on January 6, 2020 and was “expired as of” the February 11, 2020 Order.

7.

Defendants W.A. Lucky, III and Lucky Family, L.L.C. each filed a *Daubert* motion on March 20, 2020 (respectively, **Rec. Doc.** 143 and 144).

8.

¹ The Order referenced a July 30, 2019 scheduling order, but cited **Rec. Doc.** 52. There was no scheduling order issued on July 30, 2019 and **Rec. Doc.** 52 was the most recently-amended version of the scheduling order, making the intent of the Order clear.

Plaintiffs believe that the Court's setting of a new deadline for *Daubert* motions was inadvertent, as such a setting is inconsistent with the Order's directive that only deadlines that had not expired as February 11, 2020 would be continued without date. It appears that all other deadlines in the prior schedule that had expired as of February 11, 2020 are notated as "PASSED" in the Scheduling Order, save the February 7, 2020 deadline for the exchange of pre-trial order drafts.

9.

Plaintiffs tender with this motion a proposed order to correct the Scheduling Order to show that the deadline for *Daubert* motions passed, having expired on January 6, 2020, and that any *Daubert* motions filed after that date are consequently untimely, including specifically the *Daubert* motions filed at **Rec. Doc.** 143 by W.A. Lucky, III and at **Rec. Doc.** 144 by Lucky Family, L.L.C..

10.

Counsel for Plaintiffs have complied with Local Rule 7.4.1 by seeking the consent for the filing and granting of this motion from all parties having an interest to oppose same. Counsel for the defendants in this suit have not consented to this filing. The requisite certificate of conference is included with this motion.

WHEREFORE, BARBARA MARIE CAREY LOLLAR AND MAGNOLIA ISLAND PLANTATION, LLC pray that the Court sign an order correcting the Scheduling Order (**Rec. Doc.** 137) to reflect the fact that the deadline for *Daubert* motions closed as of January 6, 2020 and was not re-opened by the March 2, 2020 Scheduling Order, thus rendering any *Daubert* motions filed after January 6, 2020 untimely.

Respectfully submitted by,

/s/ Andrew D. Martin

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Counsel for Barbara Marie Carey Lollar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF filing system, and notice of the same will be sent to all counsel of record by operation of the court's electronic noticing system.

Shreveport, Louisiana, on this 24th day of March, 2020.

s/ Andrew D. Martin

OF COUNSEL